

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RULES FOR COMPLAINTS

Docket No. RM2008-3

INITIAL COMMENTS OF THE UNITED STATES POSTAL SERVICE
(October 7, 2008)

On August 21, 2008, the Postal Regulatory Commission issued an Order and Notice of Proposed Rulemaking Establishing Rules for Complaints (Order No. 101). The proposed rules seek to implement title 39 section 3662, setting forth procedures governing the disposition of complaints filed with the Commission. The United States Postal Service thanks the Commission for the opportunity to comment on its proposed rules, and hereby files its Initial Comments.

1. **Complaint Contents: The contents of a complaint should include copies of all correspondence or written communications between the complainant and the Postal Service.**

The current rule on contents of complaints, section 3001.83, includes the requirement that copies of all correspondence or written communications between the complainant, his or her agent, representative, attorney, and the Postal Service or any officer, employee, or instrumentality thereof, which relate to the subject matter of the complaint, be included in the complaint filing.¹

¹ The current rule also states that if any such documents are part of a public file in any

Proposed section 3030.10 does not include this requirement, though it does require the complainant to certify that he or she attempted to meet or confer with the Postal Service to resolve or settle the complaint. Without a requirement that the complaint also include copies of any relevant correspondence and written communications, the complainant's certification could simply represent, "I attempted to meet or confer with the Postal Service to resolve or settle the complaint", and not include any description about what material events that may have occurred during any such resolution effort, or who among nearly 700,000 postal employees may have participated, and when.

The provision of copies of relevant correspondence and other written communications is crucial to the potential settlement and swift resolution of complaints and inquiries filed at the Commission. The ability of the Postal Service personnel responsible for litigating or otherwise resolving complaints to file a fully responsive answer within the proposed 20-day time period would be greatly enhanced if, for instance, a service-related complaint referenced the names, titles, and other contact information of postal personnel with whom the complainant has communicated about the underlying matter, and provided copies of communications with such personnel. Without such information, valuable time and postal headquarters resources may be spent seeking local internal sources of information that either verify or refute allegations in a service complaint or inquiry. In an organization as large as the Postal Service, this

proceeding before an Administrative Law Judge or the Judicial Officer of the Postal Service, it need not be included if the complaint states the title, docket reference, nature, current status, and disposition of such a proceeding. This part of the current rule should be retained in the proposed rule as well.

process could be lengthy, especially if the complaint is at, or began at, the local level.

The provision of copies of all correspondence and written communications at the time of filing of a complaint also increases the probability that the Postal Service can meet the new, shortened, time deadline for the filing of answers. The time period for the Postal Service to file an answer in proposed section 3030.12 is 20 days, which is 10 days less than current section 3001.84. Yet the answer contents (described in section 3030.14) are significantly more burdensome than those in 3001.84. Without being supplied with material facts regarding any attempted meeting or conference with the Postal Service to resolve or settle a service-related complaint, the Postal Service may end up exhausting a significant portion of the time allotted to file its answer simply trying to identify appropriate local personnel in order to obtain material information from them or dispatch them to collect such information. This could make it nearly impossible to meet the requirements of the proposed rule on answers within the shortened time period.

2. Answers: **The proposed time limit for answers should remain 30 days.**

Current section 3001.84 directs the Postal Service to file and serve an answer within 30 days after the filing of a complaint with the Commission. The current rule requires 1) specific admission, denial, or explanation of each fact alleged in the complaint, (or, a statement that the Postal Service is without knowledge thereof), 2) a statement as to the position of the Postal Service on the

allegations in the complaint and the facts and reasons in support of such a position; and 3) the position of the Postal Service on the specific relief or redress required by the complainant, the disposition of the complaint recommended by the Postal Service (including whether or not a hearing should be held), and a statement of any facts or reasons in support of such a position. Proposed section 3030.12 (“Pleadings Filed in Response to a Complaint”) shortens the time period for filing an answer from 30 days to 20 days. Yet, proposed section 3030.14 (“Answer Contents”) requires much more from the Postal Service than current rule 3001.84. Proposed section 3030.14 requires, among other things, statements of legal interpretation, explanatory detail, explanations of why facts could not be reasonably ascertained, complete and full explanations of defenses, a statement of the evidentiary support the Postal Service has or expects to obtain through discovery, and a certification that the Postal Service attempted to meet or confer with the complainant to resolve or settle the complaint. This list of requirements would be difficult to meet in the proposed shortened time frame, particularly if the Postal Service is not presented with copies of all correspondence or written communications between the complainant and the Postal Service, as described in the “Complaint Contents” section above. There is no explanation given for the shortened time frame.

3. Conditions for Application of Rate or Service Inquiry Procedures. **The standard of “reasonably likely to be the beginning of such a pattern” found in paragraph (a)(3) is so vague it swallows the rule.**

Section 3030.13 provides the criteria for which complaints will be treated as rate or service inquiries, rather than formal complaints. While most of the distinguishing factors seem reasonable, the parenthetical in proposed paragraph (a)(3), “or is reasonably likely to be the beginning of such a pattern” lacks criteria that give any confidence that it could be applied other than arbitrarily. On what basis would an isolated incident or occurrence be determined to reasonably represent the “beginning” of a pattern and trigger a complaint proceeding? On what grounds would the recurrence of a phenomenon be treated as a pattern as opposed to a coincidence? The exception is worded in such a manner that it is virtually impossible to conceive of any occurrence that could not, by itself, rise to the level of a formal complaint, because it could be viewed as the potential “beginning” of a pattern. The Commission should either provide criteria that much more clearly define the basis for determining that something is “reasonably likely to be the beginning” of a pattern or drop this proposed alternative formulation altogether.

4. investigator: **The Commission should clarify and include in its rules the types of procedures the investigator will use and follow every time an investigator is deployed.**

The proposed rules introduce the concept of an investigator. The investigator would have the power to gather information that cannot be easily obtained through more conventional means, or where the use of conventional means would bring undue delay; and would help the Commission ensure that

that any proposed remedial action is tailored narrowly to address a violation without causing undue or unnecessary disruption. The investigator might also be sent to investigate whether there is sufficient cause to warrant the treatment of rate or service inquiries as a complaint. The investigator's findings will be made public in a written report to the Commission.

The Postal Service believes that the proposed rules should provide a framework for establishing the investigator's authorities and procedures, and guidelines indicating how investigators are expected to be deployed. The framework and guidelines could help to ensure the efficiency and effectiveness of the Commission's investigation; to minimize disruption of postal operations; and to protect the confidentiality of any relevant law enforcement activity. The framework and guidelines would also allow the Postal Service to best assist the investigator in gathering whatever information is necessary. In outlining the framework and guidelines, the rule should allow the Postal Service to communicate the existence of any situation (such as local operational, emergency, or seasonal conditions) that could affect the successful execution of the investigator's inquiry. The Commission may consider drawing upon the experience and some of methods employed by the Government Accountability Office as a model for determining how to structure its information gathering in this context.

Communications from a Commission investigator to the Postal Service that detail the scope and objectives of the investigation, the information, documents, site visits, and interviews that may be needed, and the proposed

schedule of the investigation, would help the Postal Service to determine how best to accommodate the investigator's needs. The Postal Service envisions that whenever the Commission decides to deploy an investigator, he or she would first contact the Postal Service through a central contact point (the phone number and email address of which will be provided by the Postal Service), and that contact point could serve as the gateway for the investigation, and assist the investigator by coordinating postal facility site visits or interviews of postal personnel; obtaining answers to questions the investigator may have about postal policies, procedures or operations, etc.; retrieving documents, explaining their contents, and reviewing them for confidentiality issues before providing them to the Commission..

Establishing clear procedures and using a central postal contact point should help the investigator and the Postal Service bring investigations to a conclusion in a manner that maximizes the efficient use of both agencies' resources. In the instances where it is difficult to specify procedures in advance, the rules could establish a requirement for consultations with the Postal Service to develop specific procedures, or create a more formal mechanism providing for proposed procedures followed by a Postal Service response.

5. Satisfaction: The Commission should clarify how it intends to close complaint dockets that have been resolved informally.

Proposed section 3030.41, paragraph (a), details the duties of the complainant should a complaint be resolved informally, in whole or in part – the

complainant must file a statement explaining the resolution, and a motion to dismiss or amend the complaint based on the resolution. However, paragraph (b) of the section states that the Commission may order the submission of additional information before acting on a motion to dismiss or amend the complaint. At page 15 of Order No. 101, in its section-by-section analysis, the Commission states that the proposed rule is designed to ensure that parties are free to explore settlement at any stage of litigating a complaint, however, once a determination that a complaint raises a material issue of fact or law has been made, the Commission believes it is prudent to evaluate whether the issues raised by the complaint may continue to impact a significant segment of the mailing community prior to closing its docket.

The proposed rule is unclear, and provides no guidance on how the Commission would evaluate whether the issues raised by the complaint continue to impact a significant segment of the mailing community.

Respectfully submitted,

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